

# Senate File 2403 - Reprinted

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2269)  
(SUCCESSOR TO SSB 3075)

(COMPANION TO HF 2793)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to devices used for weighing and measuring, by  
2 providing for the regulation of the devices, motor fuel, and  
3 persons who service the devices, and providing for fees and  
4 penalties.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 5436SZ 81  
7 da/gg/14

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1 1 Section 1. Section 214.1, Code 2005, is amended to read as  
1 2 follows:  
1 3 214.1 DEFINITIONS.  
1 4 For the purpose of this chapter:  
1 5 1. "Commercial scale" means the same as defined in section  
1 6 215.26.  
1 7 2. "Commercial weighing and measuring device" or "device"  
1 8 means the same as defined in section 215.26.  
1 9 ~~3. "Motor vehicle fuel" means a substance or~~  
1 10 ~~combination of substances which is intended to be or is~~  
1 11 ~~capable of being used for the purpose of propelling or running~~  
1 12 ~~by combustion any internal combustion engine and is kept for~~  
1 13 ~~sale or sold for that purpose a substance or combination of~~  
1 14 ~~substances which is intended to be or is capable of being used~~  
1 15 ~~for the purpose of operating an internal combustion engine,~~  
1 16 ~~including but not limited to a motor vehicle, and is kept for~~  
1 17 ~~sale or sold for that purpose.~~  
1 18 ~~4. "Motor vehicle fuel pump" means a stationary pump,~~  
1 19 ~~meter, or similar weighing and measuring device which is used~~  
1 20 ~~for measuring retail to measure motor vehicle fuel.~~  
1 21 ~~3. "Public scale" shall mean any scale or weighing device~~  
1 22 ~~for the use of which a charge is made or compensation is~~  
1 23 ~~derived.~~  
1 24 5. "Retail dealer" means the same as defined in section  
1 25 214A.1.  
1 26 6. "Wholesale dealer" means the same as defined in section  
1 27 214A.1.  
1 28 Sec. 2. Section 214.2, Code 2005, is amended to read as  
1 29 follows:  
1 30 214.2 LICENSE.  
1 31 A person who uses or displays for use ~~any~~ a commercial  
1 32 weighing and measuring device, ~~as defined in section 215.26,~~  
1 33 shall ~~secure~~ obtain a license from the department.  
1 34 Sec. 3. Section 214.3, subsection 1, Code 2005, is amended  
1 35 to read as follows:  
2 1 ~~1. The A~~ license for the inspection of a commercial  
2 2 weighing and measuring device, ~~other than for a motor fuel~~  
2 3 ~~pump,~~ shall expire on December 31 of each year, ~~and, A~~  
2 4 ~~license for the inspection of a motor vehicle fuel pump meter~~  
2 5 ~~shall expire on June 30 of each year. The amount of the fee~~  
2 6 ~~due for each license shall be as provided in subsection 3,~~  
2 7 ~~except that the fee for a motor vehicle fuel pump shall be~~  
2 8 ~~four dollars and fifty cents if paid within one month from the~~  
2 9 ~~date the license is due. A person shall apply to the~~  
2 10 ~~department to be issued a license or to renew a license as~~  
2 11 ~~provided by the department. The person shall pay the~~  
2 12 ~~department a license fee as provided in section 214.3A.~~  
2 13 Sec. 4. Section 214.3, subsection 3, Code 2005, is amended

2 14 by striking the subsection.  
2 15 Sec. 5. NEW SECTION. 214.3A LICENSE FEE SCHEDULE.  
2 16 The department shall charge a fee for a license that it  
2 17 issues or renews pursuant to section 214.3. The fee shall be  
2 18 submitted with the license application. The amount of the fee  
2 19 is as follows:  
2 20 1. For commercial scales, the fee shall be based on its  
2 21 capacity as follows:  
2 22 a. Five hundred pounds or less, nine dollars.  
2 23 b. More than five hundred pounds but not more than five  
2 24 thousand pounds, sixteen dollars and fifty cents.  
2 25 c. More than five thousand pounds but not more than fifty  
2 26 thousand pounds, forty-six dollars and fifty cents.  
2 27 d. More than fifty thousand pounds but not more than one  
2 28 hundred twenty thousand pounds, eighty-four dollars.  
2 29 e. More than one hundred twenty thousand pounds, one  
2 30 hundred six dollars and fifty cents.  
2 31 2. For meters, the fee shall be based on the type of meter  
2 32 as follows:  
2 33 a. A motor fuel pump which is used by a retail dealer,  
2 34 four dollars and fifty cents if the fee is paid before August  
2 35 1 after the date that license expires as provided in section  
3 1 214.3. The fee shall be nine dollars if the fee is paid on or  
3 2 after August 1.  
3 3 b. A mass bulk meter, nine dollars.  
3 4 c. A refined or bulk meter, nine dollars.  
3 5 d. A stationary bulk fuel meter, nine dollars.  
3 6 e. A stationary liquid petroleum gas meter, nine dollars.  
3 7 f. A moisture meter, twenty-four dollars.  
3 8 g. A liquid petroleum bulk truck meter, fifty-two dollars  
3 9 and fifty cents.  
3 10 Sec. 6. Section 214.4, subsection 1, unnumbered paragraph  
3 11 1, Code 2005, is amended to read as follows:  
3 12 If the department does not receive payment of the license  
3 13 fee required pursuant to section ~~214.3~~ 214.3A within one month  
3 14 from the due date, the department shall send a notice to the  
3 15 owner or operator of the device. The notice shall be  
3 16 delivered by certified mail. The notice shall state all of  
3 17 the following:  
3 18 Sec. 7. Section 214.4, subsection 1, paragraph b, Code  
3 19 2005, is amended to read as follows:  
3 20 b. The owner or operator has fifteen days after receipt of  
3 21 the notice to pay the license fee ~~required pursuant to section~~  
3 22 ~~214.3.~~  
3 23 Sec. 8. Section 214.5, Code 2005, is amended to read as  
3 24 follows:  
3 25 214.5 INSPECTION STICKERS.  
3 26 ~~1. For each~~ If the department licenses a commercial  
3 27 weighing and measuring device licensed pursuant to section  
3 28 214.2, the department shall also issue an inspection sticker,  
3 29 ~~which upon its inspection and approval of the device.~~  
3 30 2. The inspection sticker shall not exceed two inches by  
3 31 two inches in size. The inspection sticker shall be displayed  
3 32 prominently on the front of the commercial weighing and  
3 33 measuring device, and the defacing or wrongful removal of the  
3 34 3. A person shall not deface or wrongfully remove an  
3 35 inspection sticker shall be punished as provided in chapter  
4 1 ~~189.~~  
4 2 4. Absence ~~The absence~~ of an inspection sticker on a  
4 3 commercial weighing and measuring device is prima facie  
4 4 evidence that the commercial weighing and measuring device is  
4 5 being operated contrary to law.  
4 6 Sec. 9. Section 214.6, Code 2005, is amended to read as  
4 7 follows:  
4 8 214.6 OATH OF WEIGHMASTERS.  
4 9 ~~All persons keeping public scales~~ A person who keeps a  
4 10 commercial scale, before entering upon their engaging in the  
4 11 person's duties as weighmasters a weighmaster, shall be sworn  
4 12 before some a person having authority to administer oaths, to,  
4 13 The person who takes the oath shall swear to keep their the  
4 14 person's scales correctly balanced, to make true weights, and  
4 15 to render a correct account to the person having who requests  
4 16 that a weighing done be performed.  
4 17 Sec. 10. Section 214.8, Code 2005, is amended to read as  
4 18 follows:  
4 19 214.8 ~~PENALTY~~ PENALTIES == LIABILITY FOR DAMAGES.  
4 20 ~~1. Any weighmaster violating any of the provisions of~~  
4 21 ~~sections 214.6 and 214.7, shall be~~ Except as provided in  
4 22 subsection 2, a person who violates a provision of this  
4 23 chapter is guilty of a simple misdemeanor, and be,  
4 24 2. The state may proceed against a person who violates

4 25 this chapter by initiating an alternative civil enforcement  
4 26 action in lieu of a prosecution. The alternative civil  
4 27 enforcement action may be brought against the person as a  
4 28 contested case proceeding by the department under chapter 17A  
4 29 or as a civil judicial proceeding by the attorney general upon  
4 30 referral by the department.

4 31 a. The department shall not impose a civil penalty for the  
4 32 first alleged violation of a provision of this chapter,  
4 33 including a rule adopted pursuant to this chapter. In that  
4 34 case, the department shall issue a letter of warning which  
4 35 includes all of the following:

5 1 (1) The alleged violator's name, trade name, and address.

5 2 (2) A description of the alleged violation with specific  
5 3 citation to the statute or administrative rule alleged to have  
5 4 been violated.

5 5 (3) The location, date, and time of the alleged violation.

5 6 b. For a violation of the same provision of this chapter,  
5 7 including a rule adopted pursuant to this chapter, arising  
5 8 subsequent to the issuance of a letter of warning, the  
5 9 department may impose, assess, and collect a civil penalty as  
5 10 follows:

5 11 (1) For the first violation after the letter of warning,  
5 12 the amount of the civil penalty shall not exceed one hundred  
5 13 dollars.

5 14 (2) For the second violation after the letter of warning,  
5 15 the amount of the civil penalty shall not exceed five hundred  
5 16 dollars.

5 17 (3) For each subsequent violation after the letter of  
5 18 warning, the amount of the civil penalty shall not exceed one  
5 19 thousand dollars.

5 20 When imposing a civil penalty, the department shall  
5 21 consider the degree and extent of potential harm caused by the  
5 22 violation, the amount of money which the violator obtained as  
5 23 a result of the noncompliance, whether the violation was  
5 24 committed willfully, and the compliance record of the  
5 25 violator.

5 26 2A. a. Except as provided in paragraph "b", the state is  
5 27 precluded from prosecuting a violation pursuant to subsection  
5 28 1, if the state is a party in the alternative civil  
5 29 enforcement action, the department has made a final decision  
5 30 in the contested case proceeding, or a court has entered a  
5 31 final judgment.

5 32 b. If a party to an alternative civil enforcement action  
5 33 fails to pay the civil penalty to the department within thirty  
5 34 days after the party has exhausted the party's administrative  
5 35 remedies and the party has not sought judicial review in  
6 1 accordance with section 17A.19, the department may order that  
6 2 its final decision be vacated. When the department's final  
6 3 decision is vacated, the state may initiate a criminal  
6 4 prosecution, but shall be precluded from bringing an  
6 5 alternative civil enforcement action. If a party to an  
6 6 alternative civil enforcement action fails to pay the civil  
6 7 penalty within thirty days after a court has entered a final  
6 8 judgment, the department may request that the attorney general  
6 9 petition the court to vacate its final judgment. When the  
6 10 court's judgment has been vacated, the state may initiate a  
6 11 criminal prosecution, but shall be precluded from bringing an  
6 12 alternative civil enforcement action.

6 13 3. A person who violates a provision of this chapter is  
6 14 liable to ~~the~~ a person who is injured as a result of the  
6 15 violation for all damages sustained.

6 16 Sec. 11. Section 214.9, Code 2005, is amended to read as  
6 17 follows:

6 18 214.9 SELF-SERVICE MOTOR ~~VEHICLE~~ FUEL PUMPS.

6 19 ~~Self-service~~ A self-service motor ~~vehicle~~ fuel ~~pumps~~ pump  
6 20 located at a motor ~~vehicle~~ fuel ~~stations~~ station may be  
6 21 equipped with an automatic latch=open ~~devices~~ device on the  
6 22 fuel dispensing hose nozzle only if the nozzle valve is the  
6 23 automatic closing type.

6 24 Sec. 12. Section 214.10, Code 2005, is amended to read as  
6 25 follows:

6 26 214.10 RULES.

6 27 The department of ~~agriculture and land stewardship~~ may  
6 28 ~~promulgate~~ adopt rules pursuant to chapter 17A as necessary to  
6 29 promptly and effectively enforce the provisions of this  
6 30 chapter.

6 31 Sec. 13. Section 214.11, Code 2005, is amended to read as  
6 32 follows:

6 33 214.11 INSPECTIONS == RECALIBRATIONS == PENALTY.

6 34 The department of ~~agriculture and land stewardship~~ shall  
6 35 provide for an annual ~~inspections~~ inspection of all each motor

7 1 ~~vehicle fuel pumps pump which is licensed under this chapter.~~  
7 2 ~~inspections The inspection shall be for the purpose of~~  
7 3 ~~determining determine the accuracy of the pumps' measuring~~  
7 4 ~~mechanisms, and for such purpose the department's inspectors~~  
7 5 ~~meter and the correctness of associated equipment. In order~~  
7 6 ~~to carry out an inspection, the department may enter upon the~~  
7 7 ~~premises of any a wholesale dealer or retail dealer, as they~~  
7 8 ~~are defined in section 214A.1, of motor vehicle fuel or a~~  
7 9 ~~person selling or offering to sell fuel oil within this state.~~  
7 10 Upon completion of an inspection, the inspector shall affix  
7 11 the department's seal to the measuring mechanism of the motor  
7 12 fuel pump. The seal shall be appropriately marked, dated, and  
7 13 recorded by the inspector. If the owner of an inspected and  
7 14 sealed motor fuel pump is registered with the department as a  
7 15 servicer in accordance with section 215.23, or employs a  
7 16 person so registered as a servicer, the owner or other  
7 17 servicer may open the motor pump pump's dispenser, break the  
7 18 department's seal, recalibrate the measuring mechanism if  
7 19 necessary, and reseal the motor fuel pump as long as, if the  
7 20 department is notified of the recalibration within forty=  
7 21 eight hours, on a form provided by the department. ~~A person~~  
7 22 ~~violating a provision of this section is, upon conviction,~~  
7 23 ~~guilty of a simple misdemeanor.~~  
7 24 Sec. 14. NEW SECTION. 214.12 SUSPENSION OF REQUIREMENTS.  
7 25 The department may suspend in whole or in part any  
7 26 requirement of this chapter, including a rule adopted pursuant  
7 27 to this chapter, as applied to an identified person on the  
7 28 basis of the particular circumstances of that person, when the  
7 29 department determines that the suspension promotes the  
7 30 maintenance of good commercial practices within the state.  
7 31 Sec. 15. Section 215.1, Code 2005, is amended to read as  
7 32 follows:  
7 33 215.1 DUTY TO INSPECT.  
7 34 The department shall regularly inspect all commercial  
7 35 weighing and measuring devices, and when complaint is made to  
8 1 the department that any false or incorrect ~~weights weight or~~  
8 2 ~~measures are measure is~~ being made, the department shall  
8 3 inspect the commercial weighing and measuring devices which  
8 4 caused the complaint. The department may conduct a random  
8 5 inspection of prepacked goods to determine whether the goods'  
8 6 weight is recorded accurately.  
8 7 Sec. 16. Section 215.2, Code 2005, is amended to read as  
8 8 follows:  
8 9 215.2 SPECIAL ~~INSPECTION~~ REQUEST == FEES.  
8 10 The fee for ~~a special tests test~~, including but not limited  
8 11 to, using state inspection equipment, for the calibration,  
8 12 testing, certification, or repair of a commercial weighing and  
8 13 measuring device shall be paid by the servicer or person  
8 14 requesting the special test ~~in accordance with the following~~  
8 15 ~~schedule.~~ The amount of the inspection fee shall be as  
8 16 follows:  
8 17 1. ~~Class S, scales~~ For a commercial scale, seventy=five  
8 18 dollars per hour.  
8 19 2. ~~Class M, meters~~ For a meter, fifty=two dollars and  
8 20 fifty cents per hour.  
8 21 Sec. 17. Section 215.4, Code 2005, is amended to read as  
8 22 follows:  
8 23 215.4 TAG FOR INACCURATE DEVICE == REINSPECTION == FEE.  
8 24 A commercial weighing and measuring device found to be  
8 25 inaccurate upon inspection by the department shall be ~~tagged~~  
8 26 ~~"condemned rejected until repaired"~~ repaired and the "licensed  
8 27 for commercial use" inspection sticker shall be removed. If  
8 28 notice is received by the department that the device has been  
8 29 repaired and upon reinspection the device is found to be  
8 30 accurate, the license fee shall not be charged for the  
8 31 reinspection. However, a second license fee shall be charged  
8 32 if upon reinspection the device is found to be inaccurate. If  
8 33 at a third reinspection the device is found to be inaccurate,  
8 34 the license fee shall be charged and the device shall be  
8 35 tagged "condemned" and removed from service.  
9 1 Sec. 18. Section 215.9, Code 2005, is amended to read as  
9 2 follows:  
9 3 215.9 POWER OF CITIES LIMITED.  
9 4 ~~Commodities~~ A city ordinance shall not require that a  
9 5 commodity be weighed upon any scale bearing the inspection  
9 6 card, issued by or measured if the commodity is weighed or  
9 7 measured by a commercial weighing and measuring device  
9 8 licensed by the department, shall not be required to be  
9 9 reweighed by any ordinance of any city, nor shall their. A  
9 10 city ordinance shall not restrict the sale, of a commodity at  
9 11 the weights so a weight or measure ascertained, and because

~~9 12 thereof, be, by such ordinance, prohibited or restricted by a~~  
~~9 13 commercial weighing and measuring device licensed by the~~  
~~9 14 department.~~

9 15 Sec. 19. Section 215.10, Code 2005, is amended to read as  
9 16 follows:

9 17 215.10 INSTALLATION OF NEW SCALES.

~~9 18 1. It shall be unlawful to A person shall not install a~~  
~~9 19 commercial scale, used for commercial purposes in this state,~~  
9 20 unless the commercial scale is so installed that it is easily  
9 21 accessible for inspection and testing by equipment of the  
9 22 department, ~~and~~ with due regard to the scale's size and  
9 23 capacity. ~~The installation shall be made consistent with the~~  
~~9 24 requirements of section 215.18 and rules adopted by the~~  
~~9 25 department.~~

9 26 2. ~~Every~~ A commercial scale manufacturer or dealer shall,  
9 27 upon selling a commercial scale ~~of the above types in Iowa,~~  
9 28 submit to the department upon forms provided by the  
9 29 department, the make, capacity of the scale, the date of sale,  
9 30 and the date and location of its installation.

9 31 Sec. 20. Section 215.15, Code 2005, is amended to read as  
9 32 follows:

9 33 215.15 SCALE PIT.

~~9 34 Scale A scale~~ pit shall ~~have be~~ installed to ensure that  
9 35 ~~there is~~ proper room for an inspector or service person to  
10 1 repair or inspect the scale. ~~Scale~~ The installation shall be  
10 2 made consistent with the requirements of section 215.18 and  
10 3 rules adopted by the department. ~~The scale~~ pit shall remain  
10 4 dry at all times and adequate drainage shall be provided for  
10 5 the purpose of inspecting and cleaning.

10 6 Sec. 21. Section 215.17, Code 2005, is amended to read as  
10 7 follows:

10 8 215.17 TEST WEIGHTS TO BE USED.

10 9 1. A person engaged in scale repair work for hire shall  
10 10 use only test weights sealed by the department in determining  
10 11 the effectiveness of repair work and the test weights shall be  
10 12 sealed as to their accuracy once each year. However, a person  
10 13 shall not claim to be an official scale inspector and shall  
10 14 not use the test weights except to determine the accuracy of  
10 15 scale repair work done by the person and the person shall not  
10 16 be entitled to a fee for their use.

10 17 2. ~~A fee shall be charged and collected~~ The department  
10 18 shall impose and collect fees at the time of inspection for  
10 19 the inspection of such weights as follows:

10 20 a. A laboratory fee of seventy-five dollars per hour.

10 21 b. A service fee which shall be as follows:

10 22 (1) All weights up to and including 25  
10 23 pounds..... \$ 1.10 each  
10 24 (2) Over twenty-five pounds capacity,  
10 25 up to and including 50 pounds..... 2.25 each  
10 26 (3) Over 50 pounds capacity, up to and  
10 27 including 100 pounds..... 3.00 each  
10 28 (4) Over 100 pounds capacity, up to  
10 29 and including 500 pounds..... 4.50 each  
10 30 (5) Over 500 pounds capacity, up to  
10 31 and including 1,000 pounds..... 7.50 each  
10 32 (6) The fee for all tank calibrations shall be as follows:  
10 33 (a) 100 gallons up to and including  
10 34 300 gallons ..... \$ 4.50  
10 35 (b) 301 gallons up to and including  
11 1 500 gallons ..... 7.50  
11 2 (c) 501 gallons up to and including  
11 3 1,000 gallons ..... 11.25  
11 4 (d) 1,001 gallons up to and including  
11 5 2,000 gallons ..... 15.00  
11 6 (e) 2,001 gallons up to and including  
11 7 3,000 gallons ..... 18.00  
11 8 (f) 3,001 gallons up to and including  
11 9 4,000 gallons ..... 21.00  
11 10 (g) 4,001 gallons up to and including  
11 11 5,000 gallons ..... 24.00  
11 12 (h) 5,001 gallons up to and including  
11 13 6,000 gallons ..... 27.00  
11 14 (i) 6,001 gallons up to and including  
11 15 7,000 gallons ..... 30.00  
11 16 (j) 7,001 gallons and up ..... 37.50

11 17 3. Calibration shall not be required ~~of~~ for a tank which  
11 18 is not used for the purpose of measuring, or which is equipped  
11 19 with a meter, and vehicle tanks loaded from meters and  
11 20 carrying a printed ticket showing gallonage shall not be  
11 21 required to be calibrated.

11 22 4. The department shall deposit moneys collected in fees

11 23 which are imposed under this section into the metrology fund  
11 24 created in section 215.17A.

11 25 Sec. 22. NEW SECTION. 215.17A METROLOGY FUND.

11 26 1. A metrology fund is created in the state treasury under  
11 27 the control of the department. The fund is composed of moneys  
11 28 collected in fees required to be paid to the department  
11 29 pursuant to section 215.17. The fund may also include moneys  
11 30 appropriated by the general assembly and moneys available to  
11 31 and obtained or accepted by the department from the United  
11 32 States or private sources for placement in the fund.

11 33 2. Moneys in the fund are subject to an annual audit by  
11 34 the auditor of state. The metrology fund is subject to  
11 35 warrants written by the director of the department of  
12 1 administrative services, drawn upon the written requisition of  
12 2 the department.

12 3 3. Moneys in the fund are appropriated exclusively to the  
12 4 department for the exclusive purpose of maintaining,  
12 5 replacing, and upgrading equipment used in the department's  
12 6 metrology laboratory.

12 7 4. The department may adopt rules pursuant to chapter 17A  
12 8 which are necessary to administer this section.

12 9 5. Section 8.33 shall not apply to moneys in the fund.

12 10 Notwithstanding section 12C.7, moneys earned as income or  
12 11 interest from the fund shall remain in the fund until expended  
12 12 as provided in this section.

12 13 Sec. 23. Section 215.26, Code 2005, is amended by adding  
12 14 the following new subsection:

12 15 NEW SUBSECTION. 0A. "Commercial scale" means a weighing  
12 16 and measuring device which is used to determine the mass of a  
12 17 body by using the effect of gravity on that body, if the  
12 18 device is in the possession of a person who uses the device as  
12 19 part of a business.

12 20 Sec. 24. Section 215.26, subsection 1, Code 2005, is  
12 21 amended to read as follows:

12 22 1. "Commercial weighing and measuring device" or "device"  
12 23 means a weight or measure or weighing or measuring device used  
12 24 to establish size, quantity, area or other quantitative  
12 25 measurement of a commodity sold by weight or measurement, or  
12 26 where the price to be paid for producing the commodity is  
12 27 based upon the weight or measurement of the commodity. The  
12 28 term includes an accessory attached to or used in connection  
12 29 with a commercial weighing or measuring device when the  
12 30 accessory is so designed or installed that its operation may  
12 31 affect the accuracy of the device. Commercial weighing and  
12 32 measuring device includes a public commercial scale as defined  
12 33 under section 214.1.

12 34 Sec. 25. NEW SECTION. 215.27 PENALTIES.

12 35 1. Except as provided in subsection 2, a person who  
13 1 violates a provision of this chapter commits a simple  
13 2 misdemeanor.

13 3 2. The state may proceed against a person who violates  
13 4 this chapter by initiating an alternative civil enforcement  
13 5 action in lieu of a prosecution. The alternative civil  
13 6 enforcement action may be brought against the person as a  
13 7 contested case proceeding by the department under chapter 17A  
13 8 or as a civil judicial proceeding by the attorney general upon  
13 9 referral by the department.

13 10 a. The department shall not impose a civil penalty for the  
13 11 first alleged violation of a provision of this chapter,  
13 12 including a rule adopted pursuant to this chapter. In that  
13 13 case, the department shall issue a letter of warning which  
13 14 includes all of the following:

13 15 (1) The alleged violator's name, trade name, and address.

13 16 (2) A description of the alleged violation with specific  
13 17 citation to the statute or administrative rule alleged to have  
13 18 been violated.

13 19 (3) The location, date, and time of the alleged violation.

13 20 b. For a violation of the same provision of this chapter,  
13 21 including a rule adopted pursuant to this chapter, arising  
13 22 subsequent to the issuance of a letter of warning, the  
13 23 department may impose, assess, and collect a civil penalty as  
13 24 follows:

13 25 (1) For the first violation after the letter of warning,  
13 26 the amount of the civil penalty shall not exceed one hundred  
13 27 dollars.

13 28 (2) For the second violation after the letter of warning,  
13 29 the amount of the civil penalty shall not exceed five hundred  
13 30 dollars.

13 31 (3) For each subsequent violation after the letter of  
13 32 warning, the amount of the civil penalty shall not exceed one  
13 33 thousand dollars.

13 34 c. When imposing a civil penalty, the department shall  
13 35 consider the degree and extent of potential harm caused by the  
14 1 violation, the amount of money which the violator obtained as  
14 2 a result of the noncompliance, whether the violation was  
14 3 committed willfully, and the compliance record of the  
14 4 violator.

14 5 3. a. Except as provided in paragraph "b", the state is  
14 6 precluded from prosecuting a violation pursuant to subsection  
14 7 1, if the state is a party in the alternative civil  
14 8 enforcement action, the department has made a final decision  
14 9 in the contested case proceeding, or a court has entered a  
14 10 final judgment.

14 11 b. If a party to an alternative civil enforcement action  
14 12 fails to pay the civil penalty to the department within thirty  
14 13 days after the party has exhausted the party's administrative  
14 14 remedies and the party has not sought judicial review in  
14 15 accordance with section 17A.19, the department may order that  
14 16 its final decision be vacated. When the department's final  
14 17 decision is vacated, the state may initiate a criminal  
14 18 prosecution, but shall be precluded from bringing an  
14 19 alternative civil enforcement action. If a party to an  
14 20 alternative civil enforcement action fails to pay the civil  
14 21 penalty within thirty days after a court has entered a final  
14 22 judgment, the department may request that the attorney general  
14 23 petition the court to vacate its final judgment. When the  
14 24 court's judgment has been vacated, the state may initiate a  
14 25 criminal prosecution, but shall be precluded from bringing an  
14 26 alternative civil enforcement action.

14 27 Sec. 26. NEW SECTION. 215.28 SUSPENSION OF REQUIREMENTS.

14 28 The department may suspend in whole or in part any  
14 29 requirement of this chapter, including a rule adopted pursuant  
14 30 to this chapter, as applied to an identified person on the  
14 31 basis of the particular circumstances of that person, when the  
14 32 department determines that the suspension promotes the  
14 33 maintenance of good commercial practices within the state.

14 34 Sec. 27. Section 215A.10, Code 2005, is amended to read as  
14 35 follows:

15 1 215A.10 PENALTY.

15 2 1. Every Except as provided in subsection 2, a person who  
15 3 uses or causes to be used a moisture-measuring device in  
15 4 commerce with knowledge that such the moisture-measuring  
15 5 device has not been inspected and approved by the department  
15 6 in accordance with the provisions of as provided in this  
15 7 chapter shall be is guilty of a simple misdemeanor.

15 8 2. The state may proceed against a person who violates  
15 9 this chapter by initiating an alternative civil enforcement  
15 10 action in lieu of a prosecution. The alternative civil  
15 11 enforcement action may be brought against the person as a  
15 12 contested case proceeding by the department under chapter 17A  
15 13 or as a civil judicial proceeding by the attorney general upon  
15 14 referral by the department.

15 15 a. The department shall not impose a civil penalty for the  
15 16 first alleged violation of a provision of this chapter,  
15 17 including a rule adopted pursuant to this chapter. In that  
15 18 case, the department shall issue a letter of warning which  
15 19 includes all of the following:

15 20 (1) The alleged violator's name, trade name, and address.

15 21 (2) A description of the alleged violation with specific  
15 22 citation to the statute or administrative rule alleged to have  
15 23 been violated.

15 24 (3) The location, date, and time of the alleged violation.

15 25 b. For a violation of the same provision of this chapter,  
15 26 including a rule adopted pursuant to this chapter, arising  
15 27 subsequent to the issuance of a letter of warning, the  
15 28 department may impose, assess, and collect a civil penalty as  
15 29 follows:

15 30 (1) For the first violation after the letter of warning,  
15 31 the amount of the civil penalty shall not exceed one hundred  
15 32 dollars.

15 33 (2) For the second violation after the letter of warning,  
15 34 the amount of the civil penalty shall not exceed five hundred  
15 35 dollars.

16 1 (3) For each subsequent violation after the letter of  
16 2 warning, the amount of the civil penalty shall not exceed one  
16 3 thousand dollars.

16 4 When imposing a civil penalty, the department shall  
16 5 consider the degree and extent of potential harm caused by the  
16 6 violation, the amount of money which the violator obtained as  
16 7 a result of the noncompliance, whether the violation was  
16 8 committed willfully, and the compliance record of the  
16 9 violator.

16 10 3. a. Except as provided in paragraph "b", the state is  
16 11 precluded from prosecuting a violation pursuant to subsection  
16 12 1, if the state is a party in the alternative civil  
16 13 enforcement action, the department has made a final decision  
16 14 in the contested case proceeding, or a court has entered a  
16 15 final judgment.

16 16 b. If a party to an alternative civil enforcement action  
16 17 fails to pay the civil penalty to the department within thirty  
16 18 days after the party has exhausted the party's administrative  
16 19 remedies and the party has not sought judicial review in  
16 20 accordance with section 17A.19, the department may order that  
16 21 its final decision be vacated. When the department's final  
16 22 decision is vacated, the state may initiate a criminal  
16 23 prosecution, but shall be precluded from bringing an  
16 24 alternative civil enforcement action. If a party to an  
16 25 alternative civil enforcement action fails to pay the civil  
16 26 penalty within thirty days after a court has entered a final  
16 27 judgment, the department may request that the attorney general  
16 28 petition the court to vacate its final judgment. When the  
16 29 court's judgment has been vacated, the state may initiate a  
16 30 criminal prosecution, but shall be precluded from bringing an  
16 31 alternative civil enforcement action.

16 32 Sec. 28. NEW SECTION. 215A.11 SUSPENSION OF  
16 33 REQUIREMENTS.

16 34 The department may suspend in whole or in part any  
16 35 requirement of this chapter, including a rule adopted pursuant  
17 1 to this chapter, as applied to an identified person on the  
17 2 basis of the particular circumstances of that person, when the  
17 3 department determines that the suspension promotes the  
17 4 maintenance of good commercial practices within the state.

17 5 Sec. 29. NAME CHANGE. Sections 214A.16 and 422.11C, Code  
17 6 2005, are amended by striking the words "motor vehicle fuel  
17 7 pump" or "motor vehicle fuel pumps" and inserting the  
17 8 following: "motor fuel pump" or "motor fuel pumps".

17 9 Sec. 30. CODE EDITOR DIRECTIVE. The Code editor shall  
17 10 transfer section 215.26 to the beginning of chapter 215.

17 11 Sec. 31. Section 214A.12, Code 2005, is repealed.

17 12 SF 2403

17 13 da:nh/cc/26